

1906056 Chanery Causes: John M. Smyth, jr. vs. Mary A. Smyth to
Lee Co.

Turner

CA Estate Dispute
T-Property

Will: 1894: David Smyth Lee County

To the Honorable H.A.W.Skeen, Judge of the Circuit
Court of Lee County, Virginia

The answer of Mary A.Smyth to a bill exhibited against her and others in this Honorable Court by J.M.Smyth, Jr.

Respondent answering said bill as fully as she is advised it is necessary so to do, says:

That it is true that her husband David Smyth was, in his life-time, seised of a tract of land situated on, ~~what~~ is known as the Chesnut Ridge, and near the town of Pennington Gap; it is further true that said David Smyth departed this life on or about the 25th day of March 1894, having first made and published his last will and testament, which was afterwards, to-wit: on the 16th day of April, 1894, duly probated in the County Court of Lee County. A copy of this ~~will~~ will is here filed, marked "Exhibit A", which is prayed to be considered as a part of this answer. It will be seen upon an inspection of this will that said testator first provided for the payment of all his lawful debts, and this is made a charge upon his estate, and after the payment of debts, said testator bequeathed to his son David one- heifer, to his son Charles one hieffer and one hog, to his daughter Laura R.Smyth one horse and saddle, one heifer and one hog, to be paid or given to them on their arrival at the age of 21 years; and to your respondent, his wife, the rest or remainder of his entire estate real and personal to be held by her during her life or widowhood, and after her death to be divided equally between his children and descendants, share and share alike. At the time of his death the said David Smyth owned very little personal property as follows, to-wit, two old mares aged respectively eleven and fourteen, one cow, one heifer, some seven or eight hogs, a small amount of household and kitchen furniture, a small amount of farming utensals, a fairly good wagon &c. On the night of Mr. Smyths death the heifer above referred to gave birth to twin calves, and, perhaps, there was another calf on the place. This was all the personal property owned by said decedent at the time of his death. At that time, her said husband was considerably indebted as follows: to D.H. Howard for medical attention \$12.50, to J.F.Witt for burial clothes

\$8.95, to W.P.Wood account \$1.50 and for coffin \$18.00, to John F.Skaggs judgment for \$6.27 and \$1.00 costs, to N.L.Johnson \$10.50, to Dillard Graham \$4.19, to J.F.Skaggs account \$.13, all of which debts together with several others for which she has no receipts, your respondent paid in full, and in addition thereto respondent has paid to S.V.F. Richmond Clerk's fee bill \$3.50. In addition to all these matters respondent paid to David Smyth one heifer, bequeathed to him by the testator in said will, which was worth \$10.00; to Charles Smyth one heifer bequeathed to him by said will worth \$10.00 and also one hog which was likewise bequeathed to him by said testator; to Laura Smyth one horse about two years old for which respondent paid \$22.50, one saddle for which respondent paid W.P.Wood \$6.00, one heifer for which respondent paid John Newman, together with amount for driving it to her, \$10.50, and one hog, which respondent raised and which was worth about \$5.00.

Respondent supposes it to be true that said David Smyth, Amanda Cary, Charles Smyth and Dona Olinger have sold and conveyed their interest in said land to the said complainant. It is not true, however, that Mary J.Parsons has sold and conveyed her interest to J.T.Smyth, but it is true that she has sold the same, as respondent is informed, to her brother Elbert M.Smyth, and that Laura Parsons has sold her interest to J.T.Smyth.

Respondent will now show your Honor that said land is very poor and badly worn, washed and scalded; that it was in this condition at the time of her husband's death; and respondent denies that there is plenty, or enough, of said land cleared to maintain her in comfort, but on the contrary she will show your Honor that it is impossible with all the effort she can bestow upon it to make a decent support and maintenance on said land. She denies that she has cut any timber that was needed or necessary to keep said land in repair as to fencings and buildings and for fire wood. She admits, however, that it is true that she has cut and sold from said land a little timber, a little tan-bark and a few staves. She had cut and sold from said land timber amounting to \$13.00. This amount she sold to Mr. Wood in part payment.

for the coffin in which her husband and the complainant's father was buried. She sold this lumber, or trees, by and with the consent and under the advice of said complainant. She also sold to Mr. Nelson \$17.00 worth of timber for staves and this money she used in paying for a ~~her~~ horse purchased for her daughter Laura and bequeathed to said daughter by said testator in said will. She also had Mr. Frailey to make for her on said land about \$12.00 worth of staves which she used in paying taxes and in purchasing something to eat and wear. She also sold to Mr. A. Johnson \$9.00 worth of tan-bark, which was also used by her in purchasing provisions to eat and clothes to wear to prevent starving and going naked. It is further true that respondent has recently had cut twenty-nine poplar trees, three of which were right good ones and the balance right small. She had these trees cut for the purpose of trying to pay to William S. Hurst money that she had borrowed to pay off the indebtedness of her deceased husband, and the bequest made by him in his will. She had no other means by which she could pay the same, and she was desirous of paying off these debts and saving the land of her husband for his and her children.

Respondent will now show your Honor that she has used all the means known to her to save said estate for her children and to keep this ungrateful son in a good humor. She deprecates law suits especially with her children, and since the institution of this suit and in order to keep out of the Courthouse and to keep from exposing the complainant's harsh dealings and unnatural conduct towards her, she went to him and offered him all this timber that she had cut if he would pay up the costs and stop this unnatural suit. She knew in her heart that he was not entitled to it but to save the harrassing of her feeling in her old days, to-wit, in her seventy-second year, and to prevent exposing his meanness she made this offer, which was not ~~accepted~~. But she has understood that his purpose is to attempt to get a judgment against her, and knowing that she would be unable even to pay the cost of this suit, should it go against her, he has boasted that he would sell out her life estate in said land.

Respondent denies that she had committed any waste upon said

land or that she has used anything from it that was not absolutely necessary for the payment of her husband's debts, the bequests he made, and for her necessary, absolutely necessary, support and maintainance. She files herewith and as part hereof receipts for the payment made by her as above shown, except the receipt of Laura R. Parsons, which is in the hands of said complainant and he refuses to give it up.

And now having answered said bill as fully as she is advised it is material to answer the same, respondent prays that said injunction be dissolved, this bill dismissed and that she recover her costs in this suit most unjustly expended.

G. T. Harrison
P. S.

Mary A. Smyth
vs. { answer

John W. Smyth.

Filed in open court and
by leave thereof March
4th 1901

A. B. Munsey Clerk

Answer of Alpha Smith, Emma Smith, Bobby Smith, Luther Turner,
and Elbert Turner, By H.O. Ballou, their guardian ad litem, to a
bill of complaint exhibited against themselves and others,
by John M. Smyth Jr., in the Circuit
Court of Lee County, _____

These respondents, saving all just exceptions, & C. for answer
to the said bill, say that being infants, they submit their
rights involved in the same to the protection of the Court.
And having answered, they pray to be dismissed, & C. . .

H. O. Ballou
Guardian, ad litem.

*Sworn to before me by H. O. Ballou this the 18th day of
Feby 1901
A B Munsey Clerk*

John M. Smyth jr.
vs John.

Mary A Smyth et al

Deceased by Guardian ad litem

Filed Feb'y 18th 1901

A B Munsey clerk

J. M. Smyth Jr. Plff

vs

Mary A Smyth Defl.

Upon motion of the defendant - Mary A. Smyth, she is permitted to file her answer and exhibits therewith, which accordingly was filed, to which answer the the plaintiffs replied generally, and this cause is continued.

J. M. Smyth Jr
vs { Deere.

Mary A Smyth.
Entered on Chcy O.B.
Vol Page 538

Entered this
March 12, 1901

H. C. W. Sheen
Judge.

I, David Smyth of the County of Lee, and state of Virginia, being of sound mind and memory and considering the uncertainty of this frail and transitory life, do therefore make, ordain and publish & declare this to be my last will and testament, that is to say, First after all my lawful debts are paid and discharged, the residue of my estate real and personal, I give bequeath and dispose of as follows, to-wit, To my son David Smyth, one heifer, and to my son Charles one heifer and one hog, and To my daughter Laura R. Smyth one horse and saddle and one heifer, and one hog whenever they shall arrive at the age of twenty-one years old. To my beloved wife Mary A. Smyth the rest or remain_ of my entire effects Real and Personal during her natural life time or widowhood. Thereafter to James D. Smyth's children being my grand-children an equal part with all my children among all of whom I wish to equally divide and share alike between them.

In witness whereof I have hereunto subscribed my name and affixed my seal the fourteenth day of July 1893.

David Smyth. (Seal)

Witness

23

John A. Orr

William T. Orr.

Virginia:

At a County Court begun and held for Lee County at the Court-house thereof on Monday April the 16th, 1894.

The last will and testament of David Smyth, was this day produced in Court and the said will was proved by the oath of John A. Orr one of the subscribing witnesses thereto, who also proved the execution of said will by the testator in his presence, and in the presence of William T. Orr the other subscribing witness thereto, and that they signed said will as attesting witnesses thereto, at the request of the testator and in his presence. They all three being there present together, at the time of the signing of the same. Thereupon said will is ordered to be recorded.

A Copy teste: S.V.F. Richmond Clerk.

Copy, Teste: B. M. Morgan Clerk

Mary A. Smith

ads. { Dec. Chy.

John M. Smyth

'Exhibit A.'

Last Will and
Testament of
David Smyth

June 27/94

Received of Mr David Smith
at the hand of David Smith
P. 52 in full of all demands
to date

N. B. Johnson

"Bread is the Staff of Life."

THEREFORE HAVE IT GOOD.



 Always Reliable.

Zions Mills, Va.

Mar 26

1894

Mr David Smith & Co

Bought of

J. F. WITT,

DEALER IN

HIGH GRADE FLOUR

AND

GENERAL MERCHANDISE.

To burial goods

895

*I have recd. payment
for the above*

March 26 1901.
Received of Mary
a Smythe Traveler
Hallard and fifty
cts Being the amount
of David Smythe
Doctor Bill
W. H. Howard

Sept 26 - 1891

Received of Mrs. David Smith
April 15, 11

in full of his acct
Dillard Graham

2 85

1 34

4 19

Received July 4 1896
from David Smith
13 ~~100~~ Dollars
for Wds
J. J. Skaggs.
\$ ~~13~~ ~~100~~

= Mrs. Smith =

1800

Coffin -

By Lumber

By cash

Sum on acct

Davy's acct

By cash

$\begin{array}{r} .700 \\ 4117 \\ \hline 2800 \end{array}$

Apr 20/95

$\begin{array}{r} 1313- \\ 400 \\ \hline 1715- \end{array}$

1715-

85-

~~525-~~

~~670~~

155-

~~765-~~

45-

~~7.20~~

Received of Mary A. Smyth, ^{admiratrix} Three
Dollars & fifty-cents, for Recording will
of David Smyth, bond &c

S. W. Richmond clerk

May 21/94

This is a receipt
for one supper that
Harry Smyth gave
me. this is her
receipt.

Charles Smyth
This will be her
receipt for one
bag that she gave
me
Charles Smyth

This will be
her receipt for one
saddle east of us
she gave me.

Charles Smyth

rec'd
of labor in
Smyth

VIRGINIA--LEE COUNTY, TO-WIT:

TO James P. Ely Constable of said County:

I HEREBY COMMAND YOU TO SUMMON David Smyth

If to be found in your District to appear at Said Smyth in said county, on the
10 day of oct 1893 before me or such other Justice of the said County, as may be thereto
try this warrant, to answer complaint of J. H. Skaggs

and upon a claim for money not exceeding \$100, exclusive of interest, to-wit: For the sum of \$125.00
by acct, and then and there make return of this warrant,

Given under my hand the 23 day of Sept 1893.

John P. Myers J. P.

J. H. Skaggs

Against

David Smyth

On the 10 day of oct 1893

(In debt.)

At my office in said County.

JUDGMENT, That the Plaintiff recover of the Defendant \$0.27 1/2 with interest thereon from the
10 day of oct 1893, till paid, and \$1.00 for costs.

J. P. Myers J. P.

VIRGINIA--Lee County, To-wit: To J. P. Ely Constable of said County.

I command you in the name of the Commonwealth of Virginia, that of the goods and chattles of David Smyth

in your county, you cause to be made the sum of \$0.27 1/2 with
interest thereon from the 10 day of oct 1893, till paid, which J. H. Skaggs

Skaggs has recovered before me
warrant in debt, and also the sum of \$1.00 which were adjudged to the said J. H. Skaggs
Skaggs for costs in prosecuting said warrant.

Given under my hand the 10 day of oct 1893

J. P. Myers J. P.

J. I. Skaggs
Rd & Warrant

David Smith
Executed Oct 4
1898 By James P. Ely
C. J. E.

Paid in full
By David Smith

CONDITIONS.

1. No carrier or party in possession of all or any part of the property herein described, shall be liable for any loss thereof or damage thereto, by cause of fire, theft, pilferage, or by any means of control; or by winds or by fire from any cause or wheresoever occurring; or by riots, or by any other cause, unless the same be caused by leakage, breakage, chafing, loss in weight, changes in weather, or by any other cause, unless the same be necessary or is usual to carry such property upon such cars.
2. No carrier is bound to carry said property by any particular train or at any particular time, or to any particular market, or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any rail or other route between the point of shipment and the point to which the rate is given.
3. No carrier shall be liable for loss or damage not occurring on its own road or its route, or on the through route, nor after said property is ready for delivery to the next carrier or to the consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this Bill of Lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.
4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier, over whose route Cotton is to be carried hereunder, shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of same kind, without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.
5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination, may be kept in the car, depot or place of delivery of the carrier, at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost and there held subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station at which there is no regularly appointed agent, shall be entirely at risk of owner when unloaded from cars, or until loaded into cars; and when received from or delivered on private or other sidings, shall be at owner's risk until the cars are attached to, and after they are detached from trains.
6. No carrier hereunder will carry, or be liable in any way for any documents, specie, or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles, are endorsed hereon.
7. Every party, whether principal or agent, shipping inflammable, explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.
8. Any alteration, addition or erasure in this Bill of Lading, which shall be made without the special notation hereon of the agent of the carrier issuing this Bill of Lading, shall be void.
9. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this Bill of Lading properly endorsed shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this Bill of Lading.
10. Owner or consignee shall pay freight at the rate hereon stated, and all other charges accruing on said property, before delivery, and according to weights as ascertained by any carrier hereunder; and if upon inspection it is ascertained that the articles shipped are not those described in this Bill of Lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.
11. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the conditions, whether printed or written, contained in this Bill of Lading, including the condition that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, seas or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property. And any carrier by water liable on account of loss of or damage to any of said property, shall have the full benefit of any insurance that may have been effected upon or on account of said property.

Mary A. Smyth
ack.

John M. Smyth

Receipts

filed with depts.
Answer.
